

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

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)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
)

) Judge Patti B. Saris
)

)
) THIS DOCUMENT RELATES TO:
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)
) *The City of New York v. Abbott Labs., et al.*
) (S.D.N.Y. No. 04-CV-06054)
) *County of Suffolk v. Abbott Labs., et al.*
) (E.D.N.Y. No. CV-03-229)
) *County of Westchester v. Abbott Labs., et al.*
) (S.D.N.Y. No. 03-CV-6178)
) *County of Rockland v. Abbott Labs., et al.*
) (S.D.N.Y. No. 03-CV-7055)
) *County of Dutchess v. Abbott Labs., et al.*
) (S.D.N.Y. No. 05-CV-06458)
) *County of Putnam v. Abbott Labs., et al.*
) (S.D.N.Y. No. 05-CV-04740)
) *County of Washington v. Abbott Labs., et al.*
) (N.D.N.Y. No. 05-CV-00408)
) *County of Rensselaer v. Abbott Labs., et al.*
) (N.D.N.Y. No. 05-CV-00422)
) *County of Albany v. Abbott Labs., et al.*
) (N.D.N.Y. No. 05-CV-00425)
)

[Caption Continues on Next Page]

**DEFENDANTS' CONSENTED-TO JOINT MOTION
FOR LEAVE TO FILE UNDER SEAL**

<i>County of Warren v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00468))
<i>County of Greene v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00474))
<i>County of Saratoga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00478))
<i>County of Columbia v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00867))
<i>Essex County v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00878))
<i>County of Chenango v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00354))
<i>County of Broome v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00456))
<i>County of Onondaga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00088))
<i>County of Tompkins v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00397))
<i>County of Cayuga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00423))
<i>County of Madison v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00714))
<i>County of Cortland v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00881))
<i>County of Herkimer v. Abbott Labs. et al.</i>)
(N.D.N.Y. No. 05-CV-00415))
<i>County of Oneida v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00489))
<i>County of Fulton v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00519))
<i>County of St. Lawrence v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00479))
<i>County of Jefferson v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00715))
<i>County of Lewis v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00839))
<i>County of Chautauqua v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06204))
<i>County of Allegany v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06231))
<i>County of Cattaraugus v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06242))

<i>County of Genesee v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06206))
<i>County of Wayne v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06138))
<i>County of Monroe v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06148))
<i>County of Yates v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06172))
<i>County of Niagara v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06296))
<i>County of Seneca v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06370))
<i>County of Orleans v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06371))
<i>County of Ontario v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06373))
<i>County of Schuyler v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06387))
<i>County of Steuben v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06223))
<i>County of Chemung v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06744))
AND)
<i>County of Nassau v. Abbott Labs., et al.</i>)
(E.D.N.Y. No. 04-CV-5126))
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Defendants hereby move this Court for leave to file the following documents under seal:

- Certain May 21, 2007 Letters from Joanne M. Cicala to certain Defendants and the accompanying pricing data.

These documents were sent to defendants pursuant to this Court's directive at the May 16, 2007 status conference to produce to defendants the pricing data plaintiffs say support their FUL claims. Defendants intend to attach copies of certain May 21, 2007 Letters as exhibits to their joint submission on the FUL and PAD issue that the Court has requested be filed by this Friday, June 22, 2007. Defendants submit that these letters will greatly aid the Court in its understanding of plaintiffs' new FUL allegations. The letters, however, contain a wealth of sensitive, high confidential pricing data. If this motion is allowed, defendants intend to file under seal only the letter attachments to their submission.

Counsel for Warrick Pharmaceuticals Corporation has conferred with counsel for plaintiffs and plaintiffs consent to the relief sought by this motion.

Pursuant to the Protective Order entered by this Court on December 13, 2002 (the "Protective Order"), both the parties in the above captioned case and non-party witnesses have designated many documents and other information produced in this litigation as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." The letters described above incorporate information that has been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Specifically, the letters enclose a wealth of highly proprietary pricing information originally produced to plaintiffs by wholesalers McKesson and AmerisourceBergen. These data include hundreds of pages of prices paid by various providers for defendants' drugs and is within the core of the Protective Order as highly proprietary and confidential in nature. *See Declaration of Kim B. Nemirow*, dated June 20, 2007. Pursuant to paragraph 15 of the Protective Order, any document containing such information shall be filed under seal.

Redacted versions of the documents described above will be filed publicly.

WHEREFORE, defendants respectfully request that the motion for leave to file the
aforementioned submissions under seal be GRANTED.

Schering-Plough Corporation, Schering
Corporation, and Warrick Pharmaceuticals
Corporation

By their attorneys,

/s/ John T. Montgomery

John T. Montgomery (BBO#352220)

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Dated: June 20, 2007

CERTIFICATE OF COMPLIANCE WITH LR. 7.1

I hereby certify that counsel for Warrick Pharmaceuticals Corporation has conferred with
counsel for plaintiffs and counsel for plaintiffs assent to this motion.

/s/ Kim B. Nemirow

Kim B. Nemirow

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Kim B. Nemirow
Kim B. Nemirow